

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**CRIMINAL APPLICATION ( MAIN ) NO. 48 OF 2018**

SUNIL KUMAR YADAV., ... Applicant

Versus

MUNNA SINGH AND ANR., ... Respondents

Shri Prasad U. Dessai, Advocate for the applicant.  
Shri Ashwin D. Bhobe, Advocate for the respondent no.1.  
Shri S. R. Rivankar, Public Prosecutor for the respondent no.2.

Coram:- C. V. BHADANG, J.

Date:- 27th August 2018

P.C.

This is an application for leave to appeal against acquittal.

2. The petitioner had filed a complaint under Section 138 of the Negotiable Instruments Act (the Act, for short) against the respondent no.1 in respect of dishonour of the cheque in the sum of Rs.2,50,000/-. The learned Magistrate, by the impugned judgment dated 18/02/2017, had acquitted the respondent no.1 holding that the petitioner had failed to establish that the cheque was issued towards legally enforceable debt and the cheque, on presentation for realisation, was dishonoured for insufficient funds and also on the ground that the petitioner had failed to establish the service of the statutory notice on the respondent no.1. The learned Magistrate, thus, has held that the petitioner has failed to prove that in spite of service of legal notice dated 04/03/2015, the respondent no.1 failed to pay the amount within

15 days.

3. I have heard Shri Desai, the learned Counsel for the petitioner and Shri Bhobe, the learned Counsel for the respondent no.1. Perused record.

4. The only contention raised on behalf of the petitioner is that there was no cross-examination of the petitioner on behalf of the respondent no.1, disputing the fact about service of the notice. The learned Counsel for the petitioner has brought to my notice the fact that a copy of the notice along with postal acknowledgement was produced and exhibited on record. He, therefore, submitted that the learned Magistrate could not have acquitted the first respondent on the ground of failure to establish the service of notice.

5. Shri Bhobe, the learned Counsel for the respondent no.1, however, points out that it is the basic requirement for making out an offence under Section 138 of the Act that the accused fails to pay the amount of the cheque within 15 days in spite of there being demand. It is submitted that the responsibility to establish this basic requirement was on the petitioner and the petitioner cannot take benefit of an absence of challenge to the service of notice at the instance of the respondent no.1, to claim that the said requirement is established. The learned Counsel points out that the acknowledgement produced on record does not bear any signature.

6. I have considered the circumstances and the submissions

made.

7. The learned Counsel for the respondent no.1 is right in contending that the basic requirement that the accused fails to pay the amount within 15 days in spite of service of notice, has to be established by the petitioner/complainant. A bare perusal of the copy of the acknowledgement produced on record shows that it does not bear any signature. Thus, it cannot be accepted that the service of the notice was established by the petitioner. I have carefully gone through the impugned order and it does not suffer from any perversity, so as to require interference. The view taken by the learned Magistrate is a plausible view. In such circumstances, the Application for leave to appeal against acquittal is hereby dismissed. Registration of appeal stands refused.

C. V. BHADANG, J.

SMA